

# SENATE BILL No. 278

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-6-3.9.

**Synopsis:** Secretary of state investigations. Authorizes the secretary of state (secretary) to conduct public or private investigations: (1) to determine whether a violation of Indiana election law has occurred, is occurring, or is about to occur; and (2) to aid in the enforcement of Indiana election law. Gives the secretary certain investigative powers, including the power to issue subpoenas and conduct depositions. Requires the attorney general to provide legal assistance to the secretary in the investigation of possible violations. Requires the secretary, upon request, to provide all necessary and reasonable assistance to the agency or the prosecuting attorney to which investigation results are referred. Requires the agency or prosecuting attorney receiving a referral from the secretary to report to the secretary not later than the earlier of: (1) 180 days after the referral; or (2) the sixtieth day before the statute of limitations expires on a violation that was referred; the agency's or the prosecuting attorney's decision as to whether to take further action on the referral, including the action taken and the reasons for the decision.

**Effective:** July 1, 2008.

**Delph**

January 10, 2008, read first time and referred to Committee on Local Government and Elections.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 278

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 3-6-3.9 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

### **Chapter 3.9. Investigation of Violations of Election Law**

**Sec. 1. The secretary of state may conduct public or private investigations as the secretary of state considers necessary or appropriate to:**

**(1) determine whether a violation of:**

**(A) this title;**

**(B) a rule adopted under this title; or**

**(C) an order issued under this title;**

**has occurred, is occurring, or is about to occur; or**

**(2) aid in the enforcement of:**

**(A) this title; or**

**(B) rules adopted under this title.**

**Sec. 2. (a) If, after conducting an investigation under section 1 of this chapter, the secretary of state determines that a violation**

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has occurred, is occurring, or is about to occur, the secretary of state shall refer the results of the investigation to the appropriate local, state, or federal agency.

(b) If, after conducting an investigation under section 1 of this chapter, the secretary of state determines that there is a basis for belief that there may have been a violation of criminal law, the secretary of state shall refer the results of the investigation to the appropriate federal agencies or the appropriate prosecuting attorney.

(c) At the request of:

(1) a federal, state, or local agency receiving a referral described in subsection (a) or (b); or

(2) a prosecuting attorney receiving a referral described in subsection (b);

the secretary of state shall give all necessary and reasonable assistance to the agency or the prosecuting attorney to facilitate the investigation of violations and the enforcement of this title.

(d) A federal, state, or local agency or a prosecuting attorney to which the secretary of state has referred investigation results under subsection (a) or (b) shall report to the secretary of state:

(1) the agency's or prosecuting attorney's decision as to whether to take further action on the referral;

(2) a description of the action taken or to be taken; and

(3) the reasons for the decision.

(e) A report made under subsection (d) must be filed with the secretary of state on the earlier of the following:

(1) One hundred eighty (180) days after the date of the referral.

(2) Sixty (60) days before the date the statute of limitations expires on a violation that was referred.

**Sec. 3. (a)** In conducting an investigation under this chapter, the secretary of state or a person designated by the secretary of state to exercise the powers provided in this section may do any of the following:

(1) Administer oaths and affirmations.

(2) Issue and serve subpoenas requiring:

(A) the appearance of a witness in person before the secretary of state or any person designated by the secretary of state; or

(B) the production of books, papers, electronic data, and documents or other things.

(3) Question witnesses.

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(4) Require the filing of statements and other evidence.

(5) Take depositions in the manner prescribed by law for depositions in civil actions.

(6) Transcribe testimony provided by witnesses by deposition or other methods.

(7) Examine, inspect, or test, or cause to be examined, inspected, or tested, any machine, computer, or other thing.

(8) Apply to a court to enforce a subpoena or any other investigative request issued under this chapter.

(b) Each witness who appears before the secretary of state or a person designated by the secretary of state under subsection (a) by subpoena or other order is entitled to receive for the witness's attendance the fees and mileage provided for witnesses in civil cases, which shall be audited and paid by the state in the same manner as other expenses of the secretary of state are audited and paid upon the presentation of proper vouchers sworn to by the witnesses and approved by the secretary of state. However, a witness subpoenaed by a party other than the secretary of state or a person designated by the secretary of state under subsection (a) is not entitled to any fee or compensation from the state.

Sec. 4. (a) This section applies if:

(1) a person disobeys a lawful:

(A) subpoena issued under this chapter; or

(B) demand issued under this chapter requiring the production of books, accounts, papers, records, documents, or other evidence or information; or

(2) a witness refuses to:

(A) appear when subpoenaed;

(B) testify to any matter regarding which the witness may lawfully be questioned; or

(C) take or subscribe an oath required under this chapter.

(b) The secretary of state may file a written petition with the circuit or superior court of the county in which the investigation is being or will be conducted or where production is ordered to be made to compel:

(1) obedience to the lawful requirements of the subpoena or order;

(2) the production of the necessary or required books, papers, records, documents, or other evidence or information; or

(3) a witness to:

(A) appear in any county in Indiana and to testify to any matter regarding which the witness may lawfully be

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interrogated; or

(B) take or subscribe to an oath required under this chapter.

(c) The court shall hold a hearing to determine whether the person referred to in subsection (a)(1) may lawfully refuse to comply with the subpoena or demand or whether the witness referred to in subsection (a)(2) may lawfully refuse to appear, take an oath, and testify.

(d) If the court determines that the person referred to in subsection (a)(1) or the witness referred to in subsection (a)(2), based upon the person's or witness's privilege against self-incrimination, may properly refuse to answer a particular question or produce a particular item, the court shall grant use immunity to the person or witness at the written request of the secretary of state. The court shall instruct the person or witness, by written order or in open court, that:

(1) evidence the person or witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against the person or witness, unless the evidence is volunteered by the person or witness or is not responsive to a question; and

(2) the person or witness must answer the questions asked or produce the items requested.

A grant of use immunity under this subsection does not prohibit the use of evidence that the person or witness gives in an investigation from being used in a prosecution for perjury under IC 35-44-2-1.

(e) If a person:

(1) refuses to give the evidence after the person has been granted use immunity under subsection (d); or

(2) otherwise fails, refuses, or neglects to comply with a court order under this section;

the court shall punish the person for contempt of court.

(f) This section does not preclude a person from applying to the circuit or superior court in the county in which the investigation is being or will be conducted or where production is ordered to be made for relief from a request or order to appear, testify, file a statement, produce records, or obey a subpoena.

**Sec. 5.** At the secretary of state's request, the attorney general shall give all necessary assistance to the secretary of state to implement this chapter.

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